

WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 429-7000

January 5, 1998

WRITER'S DIRECT DIAL NUMBER

(202) 429-7384

DOCKET FILE COPY ORIGINAL

RECEIVED FACSIMILE
(202) 429-7049

JAN - 5 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND

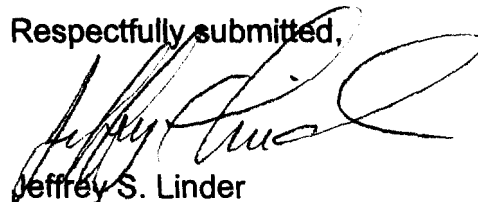
Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Diskette of GTE Petition to Deny in CC Docket No. 97-211

Dear Ms. Salas:

Attached is a diskette in WordPerfect 5.1 for Windows format containing GTE's Petition to Deny, filed today in the above-captioned docket. Please feel free to contact the undersigned with any questions.

Respectfully submitted,



Jeffrey S. Linder

No. of Copies rec'd
List A B C D E

024

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL
DOCKET FILE COPY ORIGINAL

RECEIVED

JAN - 5 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Applications of WorldCom, Inc. and
MCI Communications Corporation
for Transfer of Control of
MCI Communications Corporation to
WorldCom, Inc.

)
)
)
)
)
)

CC Docket No. 97-211

To: The Commission

**PETITION TO DENY OF GTE SERVICE CORPORATION
AND ITS AFFILIATED TELECOMMUNICATIONS COMPANIES**

William P. Barr, Executive Vice President &
General Counsel
Ward W. Wueste, Vice President -
Deputy General Counsel

GTE SERVICE CORPORATION
One Stamford Forum
Stamford, CT 06904

Richard E. Wiley
R. Michael Senkowski
Jeffrey S. Linder
Peter D. Shields

WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

Dated: January 5, 1998

TABLE OF CONTENTS

	<u>Page</u>
I. WORLDCOM AND MCI's APPLICATIONS IGNORE THE FCC'S <i>BELL ATLANTIC/NYNEX</i> STANDARD AND TREAT THE ACQUISITION OF THE NATION'S SECOND LARGEST INTEREXCHANGE CARRIER AS A GARDEN-VARIETY TRANSFER.....	4
A. WorldCom's Basic Competitive and Public Interest Showing Does Not Satisfy Its Burden of Proof or the FCC's Merger Review Standards.....	6
B. WorldCom's Showing Concerning Anti-Competitive Effects Fails to Meet the <i>Bell Atlantic/NYNEX</i> Requirements.....	8
C. WorldCom's Public Interest Showing Fails to Meet the <i>Bell Atlantic/NYNEX</i> Requirements.....	9
II. THE WORLDCOM/MCI MERGER WOULD DIMINISH COMPETITION IN THE DOMESTIC RETAIL AND WHOLESALE LONG DISTANCE MARKETS.	10
A. The Merger Would Exacerbate Coordinated Interaction in the Retail Long Distance Market.	11
1. WorldCom and MCI Are Two of Only Four Most Significant Participants in the Domestic Retail Long Distance Market.	11
2. The Merger Would Reinforce Conditions that Promote Cooperative Pricing of Long Distance Services and Would Eliminate the Lone Maverick Supplier.	15
a) The Domestic Long Distance Market Already Exhibits Coordinated Pricing.	16
b) The Merger Would Reverse WorldCom's Incentives to Disrupt the Oligopoly and Would Exacerbate Coordinated Interaction Among the Remaining IXC's.....	19
B. The Merger Would Compromise the Supply of Bulk Capacity and Advanced Features in the Resale Input Market.	25

III. THE WORLDCOM/MCI MERGER WOULD CREATE MARKET POWER IN INTERNATIONAL TELECOMMUNICATIONS MARKETS.....	29
A. The WorldCom/MCI Merger Would Result In Increased Market Concentration In International End-User Product Markets.....	30
1. The WorldCom/MCI Merger Would Result in Increased Market Concentration in the International Private Line Services Market.....	30
2. The WorldCom/MCI Merger Would Threaten Competition in the International Message Telephone Service Market.	33
B. The Merged Entity Would Control an Essential Input for Retail Service Providers, Thereby Creating Barriers to Entry for Competitors in the U.S. International Telecommunications Marketplace.....	35
IV. WORLDCOM HAS FAILED TO ADDRESS THE COMPETITIVE EFFECTS OF THE MERGER ON LOCAL EXCHANGE AND EXCHANGE ACCESS SERVICES.....	42
V. WORLDCOM AND MCI HAVE FAILED TO ADDRESS THE SUBSTANTIAL ANTICOMPETITIVE IMPACT OF THE PROPOSED MERGER ON THE INTERNET MARKET.....	46
VI. THE WORLDCOM/MCI MERGER WOULD DIMINISH COMPETITION IN THE NASCENT MARKET FOR BUNDLED TELECOMMUNICATIONS SERVICES.....	47
VII. CONCLUSION	49

Appendix 1: Declaration of Debra R. Corey

Appendix 2: International Private Line HHI Analysis

Appendix 3: IMTS HHI Analysis

SUMMARY

WorldCom and MCI are direct competitors in virtually every aspect of their U.S. telecommunications ventures. Their proposed merger would create massive competitive overlaps permeating the interexchange, international, local exchange, and bundled services markets. Consequently, the combination of WorldCom and MCI would diminish competition and increase concentration in markets that are already heavily concentrated.

Considering the circumstances, one might have expected the applicants to acknowledge the merger's anti-competitive effects and enlighten the agency about any offsetting benefits. The transfer applications, however, make no attempt to define product and geographic markets, identify most significant market participants, or discuss the competitive effects of the merger on any service market. Nor is there a single factual showing to confirm any purported efficiency gains or public interest benefits. Instead, WorldCom and MCI have submitted applications that are devoid of facts and uncorroborated by documentation.

The absence of any competitive assessment seems rooted in the applicants' astonishing assertion that "[m]ost of the activities of WorldCom and MCI are complementary rather than directly competitive." (WorldCom App., at p. 27) This claim should certainly come as a big surprise to anyone even remotely familiar with the telecommunications marketplace. In fact, one is hard-pressed to identify any of their respective services where WorldCom and MCI are *not* direct competitors.

Because WorldCom and MCI avoid any discussion of the merger's competitive and consumer effects, their applications are fatally deficient under the Commission's

standards for reviewing such transfer applications. This omission is even more glaring given the following anti-competitive consequences, which are obvious from even a cursory examination of the FCC's market data and other publicly available information.

Interexchange Services. The combination of the nation's second largest and fourth largest interexchange service providers would significantly exacerbate market concentration, enhance the likelihood of coordinated conduct by the surviving three major companies (AT&T, Sprint and WorldCom/MCI) in the retail market, and encourage unilateral anti-competitive behavior by WorldCom in the supply of wholesale capacity. In particular, the merger would impose a competitive triple whammy by: (1) eliminating the only significant competitor that is a pricing maverick (WorldCom); (2) reducing the number of most significant market participants to just three (AT&T, Sprint and WorldCom/MCI); and, (3) encouraging and enabling WorldCom to raise the price for wholesale capacity provided to long distance resellers that compete with MCI, AT&T, and Sprint.

International Services. With respect to international services, the merger would create market or monopoly power in three basic respects:

- For 73 of the countries served by WorldCom's and MCI's competing private line services, the merger would be presumed "likely to create or enhance market power"; and, in nine of those markets, the merger would result in pure monopoly conditions.
- For 24 of the countries served by WorldCom's and MCI's competing International Message Telephone Services ("IMTS"), the merger would be presumed "likely to create or enhance market power."
- The merger would increase concentration in the control of international undersea cables and cable landing access facilities, which are essential inputs for new entrants seeking to compete in international services markets.

Competitive Local Exchange Carrier ("CLEC") Services. The applicants also have failed to provide even rudimentary information concerning their competing CLEC operations. Yet, the most basic review of information made public by WorldCom and MCI on their respective Internet web sites reveals that competitive overlaps of existing or planned CLEC operations would occur in at least 26 of the largest markets in the country. Without access to the companies' Hart-Scott-Rodino submissions, it is impossible to ascertain the full scope of the proposed merger's effects upon planned entry by the two companies into competition with each other.

Internet Services. After the merger, WorldCom/MCI would be by far the largest provider of Internet backbone capacity and would control other significant Internet-related assets. The parties nonetheless have supplied no information that would permit the Commission to determine whether the merger would adversely affect competition in the market for Internet-related services. Although the Commission has no jurisdiction to regulate the Internet, it should take cognizance of the merger's anti-competitive effects on the Internet marketplace as part of its public interest analysis. Here, of course, the risks of such harm are both evident and severe enough to preclude a finding that the proposed merger would serve the public interest. At a minimum, the applicants must submit the information mandated by the *Bell Atlantic/NYNEX* requirements and the Commission must afford interested parties full opportunity to review, analyze, and respond to that submission.

Bundled Telecommunications Services. There is little doubt that the merger of WorldCom and MCI would, in some large measure, adversely affect the growth of the

still-emerging bundled services market. The applicants are two of very few companies that can offer facilities-based interexchange and local service. Moreover, the fact that the transaction reduces competition in the supply of interexchange, CLEC, and international inputs inevitably will constrain competition in the provision of bundled services. By substituting vague promises for hard fact, however, the applicants make a full assessment impossible.

Public Interest Benefits Showing. Notwithstanding the obvious anti-competitive effects of the proposed merger, the applicants have failed to demonstrate any offsetting public interest benefits. Indeed, there are no facts, figures or analysis offered to show that the merger will have any beneficial effects for the public. Nothing more than hollow claims of efficiencies, synergies and common pioneer ancestry can be found in the applications – and, upon scrutiny, it becomes clear that any “efficiencies” and “synergies” simply represent the removal of a competitor. In short, the applicants have presented precisely the type of uncorroborated, wishful incantation that the Commission has rejected as insufficient to support public interest claims.

* * * * *

In sum, the Commission has established specific standards for reviewing the competitive and public interest effects of telecommunications mergers. The applicants, however, have ignored these requirements notwithstanding powerful *prima facie* evidence of anticompetitive effects. Accordingly, the WorldCom and MCI applications must be summarily denied.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Applications of WorldCom, Inc. and)	
MCI Communications Corporation)	CC Docket No. 97-211
for Transfer of Control of)	
MCI Communications Corporation to)	
WorldCom, Inc.)	

To: The Commission

PETITION TO DENY

GTE Service Corporation and its affiliated telecommunications companies¹ (collectively "GTE") herewith submit their petition to deny the above-captioned applications of WorldCom, Inc. ("WorldCom") for transfer of control of MCI Communications Corporation ("MCI").² As detailed below, the proposed acquisition of MCI by WorldCom gives rise to an unprecedented array of competitive and public

¹ GTE Alaska, Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., Contel of the South, Inc., GTE Communications Corporation, and GTE Hawaiian Tel International Incorporated.

² Pursuant to Public Notice, DA 97-2494, released November 25, 1997, Petitions/Comments on the WorldCom/MCI Application are due on January 5, 1998. Therefore, this Petition to Deny is timely filed.

interest concerns created by the extensive and direct overlaps of their interests.

Despite the obvious importance of these issues, the applicants have elected to ignore the well-established obligations of transferors and transferees to document the effects of their proposed merger on competition and the public interest.³

The adverse effects of this proposed merger will stretch from the local loop around the globe. Those repercussions and GTE's position as a customer and competitor of the applicants in a variety of markets⁴ establish the basis for its standing to make the foregoing objections, pursuant to Section 309(d) of the Communications Act.⁵ Section 309(d) permits "[a]ny party in interest [to] file with the Commission a petition to deny any application," where the objecting party can assert that the application's grant is "reasonably likely to result in . . . some injury of a direct, tangible

³ In light of the applicants' egregious failure to comply with the Commission's requirements, GTE is filing contemporaneously a Motion to Dismiss the applications. GTE also is filing a Request to Inspect Protected Information, which seeks access to any Hart-Scott-Rodino documents that the Commission has received or will receive from WorldCom and MCI in the course of its analysis of the proposed merger.

⁴ GTE is a major customer of long services for both resale and internal use, and WorldCom is its predominant supplier. As such, GTE purchases a wide array of services, including: (1) basic long distance for resale; (2) advanced long distance services for resale; (3) long distance as a component of wireless service; (4) long distance for GTE internal use and infrastructure support; and (5) international long distance as a component both of long distance for resale and wireless service, and for internal use. These long distance purchases will total about one-half billion dollars in 1997, and are expected to increase significantly in 1998.

⁵ See, e.g., *AmericaTel Corp.*, 9 FCC Rcd 3993, 3995 (1994) (finding that a direct competitor need only allege "potential economic injury" for standing); see also, *NAB Petition for Rulemaking*, 82 F.C.C. 2d 89 (1980), as modified, *Maumee Valley Broadcasting, Inc.* 12 FCC Rcd 3487 (1997) (granting standing to viewers (consumers) of broadcast licensees).

or substantial nature.”⁶ As will be shown, the merger of the applicants would create anti-competitive effects that would injure not only GTE and other resellers, but consumers and others in the U.S. and worldwide. For these reasons, GTE undeniably has standing to challenge the applications of WorldCom and MCI.

This petition documents that a WorldCom/MCI merger would result in competitive overlaps in several markets:

- Section II demonstrates that combining the second largest and fourth largest interexchange service providers would greatly increase market concentration, enhance the likelihood of coordinated conduct by the surviving three major companies (AT&T, Sprint and WorldCom/MCI), and create a risk of unilateral anticompetitive conduct by the merged company in the provision of wholesale capacity to resellers that compete in retail markets.
- Section III makes clear that the merger would create market or monopoly power in many international markets.
- Section IV shows that, although WorldCom and MCI have failed to provide even basic information concerning their competing CLEC operations, the companies appear to have competitive overlaps in 26 of the largest markets in the country.
- Section V explains that the combined WorldCom/MCI would be the largest provider of Internet backbone capacity and would control other important Internet-related assets, raising grave competitive risks that the applicants do not even attempt to address.
- Section VI describes the potential anti-competitive effects the proposed merger would have on the nascent bundled services market.

In addition, this petition shows that WorldCom and MCI have failed to fulfill their obligation to “demonstrat[e] that the proposed transaction is in the public interest” and that any harms to competition “are outweighed by benefits that enhance competition,”

⁶ *Time Warner Entertainment Co.*, 10 FCC Rcd 9300, 9302 (CSB 1995).

as required by the Commission in the *Bell Atlantic/NYNEX Order*.⁷ For example, the applicants fail to document any efficiency benefits to be produced by the proposed merger. These omissions offer independent grounds for the denial of their applications.

I. WORLDCOM AND MCI'S APPLICATIONS IGNORE THE FCC'S *BELL ATLANTIC/NYNEX* STANDARD AND TREAT THE ACQUISITION OF THE NATION'S SECOND LARGEST INTEREXCHANGE CARRIER AS A GARDEN-VARIETY TRANSFER.

If brevity is a virtue, WorldCom is more virtuous than Caesar's wife. Only a few pages of prose are devoted to describing the applicants' telecommunications interests and the purported public interest benefits of the largest telecommunications merger ever. Even more remarkable is that the lion's share of this limited attention consists of repetitious and bare contentions. WorldCom hardly mentions the seminal merger case, *Bell Atlantic/NYNEX*, let alone the FCC's rigorous standard for approving mergers such as the instant one.

WorldCom essentially portrays its proposed acquisition of MCI as just the latest addition in its series of interexchange carrier acquisitions. Glossing over the global scope of their proposed transaction, which they have touted as the largest merger in U.S. history, WorldCom and MCI act as though this deal is a garden-variety acquisition of a minor interexchange carrier. More specifically, WorldCom and MCI ignore the FCC's rigorous standards for reviewing mergers. While the agency has unequivocally

⁷ *Applications of NYNEX Corporation and Bell Atlantic Corporation for Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries, Memorandum Opinion and Order*, FCC 97-286, File No. NSD-L-96-10 (rel. Aug. 14, 1997) ("*Bell Atlantic/NYNEX*").

and repeatedly signaled that the days of "routine" merger processing are over, WorldCom and MCI have clearly missed that signal and, in this case, the boat.

It is not as though WorldCom and MCI lacked guidance to assemble an application containing all required information. To the contrary, in its recent merger orders – including proceedings in which MCI was a petitioner – the Commission has established a detailed analytical framework for evaluating the public interest and competitive effects of a transaction. In *Bell Atlantic/NYNEX*, the Commission used plain, clear language to establish a process, which was further refined in the subsequent *British Telecommunications/MCI* and *Century Telephone/PacificCorp* decisions.⁸ Specifically, the Commission requires the applicants to address the following:

- Definition of Product Market(s)
- Definition of Geographic Market(s)
- Identification of Significant Actual or Potential Competitors
- Determination of Whether There Are Public Interest Benefits That Enhance Competition and Therefore Outweigh Any Anti-Competitive Effects

The applicants have utterly failed to discharge these obligations, even though the Commission's standards govern all "mergers that may present horizontal market power concerns."⁹ Furthermore, MCI and WorldCom must recognize that the

⁸ The Commission's criteria were borne of its consideration of three significant mergers in 1997. See *Pacific Telesis Group and SBC Communications, Inc., Memorandum Opinion and Order*, Rpt. No. LB-96-32, FCC 97-28 (rel. Jan. 31, 1997) (*SBC/PacTel Order*); *Bell Atlantic/NYNEX Order, MCI Communications Corp. and British Telecommunications plc, Memorandum Opinion and Order*, GN Docket No. 96-245, FCC 97-302 (rel. Sept. 24, 1997) (*BT/MCI II Order*).

⁹ *Bell Atlantic/NYNEX Order* at ¶ 37; see also *Pittencrieff Communications, Inc. and Nextel Communications, Inc., Memorandum Opinion and Order*, CWD No. 97-22, DA 97-2260 (rel. Oct. 24, 1997), at ¶¶ 10-17 (*Pittencrieff/Nextel Order*)

Commission is obliged to apply its standards in an even-handed fashion.¹⁰

Consequently, there is no excuse for their failure to comply with the *Bell*

Atlantic/NYNEX requirements in the pending applications.

A. WorldCom's Basic Competitive and Public Interest Showing Does Not Satisfy Its Burden of Proof or the FCC's Merger Review Standards.

Before approving a proposed transfer of control, the FCC is required by the public interest standard of Sections 214(a) and 310(d) to consider "the effects of the transfer on competition."¹¹ The Commission elaborated on this standard in the *Bell Atlantic/NYNEX* merger and has since refined its application, determining that (1) future telecom mergers would be evaluated using this framework, and (2) the applicants "bear the burden of demonstrating that the proposed transaction is in the public interest."¹²

For WorldCom and MCI to satisfy their burden meeting this public interest standard, their applications must show that the merger will not "substantially . . . lessen competition . . . or . . . create a monopoly"¹³ and also "will enhance competition."¹⁴

(...Continued)

(applying the *Bell Atlantic/NYNEX* analysis to a transaction involving CMRS licensees).

¹⁰ See, e.g., *Melody Music v. FCC*, 345 F.2d 730 (D.C. Cir. 1965); *Etelson v. Office of Personnel Management*, 684 F.2d 918, 926-27 (D.C. Cir. 1982); *Adams Telecom v. FCC*, 38 F.3d 576, 581 (D.C. Cir. 1994).

¹¹ *Pittencrieff/Nextel Order* at ¶ 8.

¹² *Bell Atlantic/NYNEX Order* at ¶ 2.

¹³ *Bell Atlantic/NYNEX Order* at ¶ 33 (citing 15 U.S.C. § 18, 21(a) (1997)).

¹⁴ *Bell Atlantic/NYNEX Order* at ¶ 2.

Additionally, WorldCom and MCI are required to document that any “harms to competition . . . are outweighed by benefits that enhance competition.”¹⁵ Consequently, WorldCom and MCI must prove not only the benefits to be derived from their merger, but that these benefits outweigh any resulting harms (e.g., “enhancing market power” or “slowing the decline of market power”).¹⁶ In other words, the *Bell Atlantic* decision requires WorldCom and MCI to “prove that, on balance, the merger will enhance and promote, rather than eliminate or retard” other sources of competition.¹⁷

For MCI’s part, these criteria should come as no surprise. The Commission applied the same competitive analysis in its review of the public interest effects of the now-defunct British Telecom-MCI merger. Specifically, the Commission in that proceeding sought information as to “whether the merger would consolidate or eliminate firms possessing significant assets or capabilities in . . . relevant markets”¹⁸ and “whether the merger [would be] likely to increase the incentive or ability of either [company] . . . to discriminate in favor of its affiliate in another market”¹⁹ In this case, however, MCI and WorldCom have failed to offer the requisite showing.

¹⁵ *Bell Atlantic/NYNEX Order* at ¶ 2.

¹⁶ *Bell Atlantic/NYNEX Order* at ¶ 2.

¹⁷ *Bell Atlantic/NYNEX Order* at ¶ 3.

¹⁸ *BT/MCI II Order* at ¶ 9.

¹⁹ *BT/MCI II Order* at ¶ 16.

B. WorldCom's Showing Concerning Anti-Competitive Effects Fails to Meet the *Bell Atlantic/NYNEX* Requirements.

WorldCom's discussion of the merger's potentially adverse effects upon competition is a model of word economy. The entire showing is relegated to just two *paragraphs* in its applications. An almost verbatim recitation of its submission is as follows:

- "[N]either WorldCom nor MCI is a dominant carrier." (38).
- "[T]he revenue shares of WorldCom and MCI are minimal in the sector on which their capital investment and expansion programs primarily focus: local services (both domestic and international)." (*Id.*)
- "[N]either WorldCom nor MCI controls bottleneck facilities." (39).
- "Nor is the proposed Merger likely to have any significant adverse impact on the Commission's ability to enforce regulatory oversight responsibilities, given WorldCom and MCI's lack of market power and foreign affiliation." (39-40).
- "The Merger is . . . unlikely to increase the likelihood of coordinated action among other industry players because the long distance industry, rather than being highly concentrated, epitomizes the competitive marketplace." (40).
- "[N]o precluded competitor who has previously been deterred or prevented by regulatory barriers from entering the market is being removed from the market by the Merger at a time when barriers that previously had precluded its entry are being removed." (40-41 (footnote omitted)).

The foregoing assertions are not accompanied by any data concerning the respective telecommunications interests of the two companies, their market shares, their facilities, or the extent of their competitive overlaps. Nor are any studies, data, or other information offered to substantiate even the minimalist claims outlined above. Instead, WorldCom contends only that "there are no specific anti-competitive concerns, such as enhancement of a party's existing market power, to be overcome," and, that

"[m]ost of the activities of WorldCom and MCI are complementary rather than directly competitive."²⁰

C. WorldCom's Public Interest Showing Fails to Meet the *Bell Atlantic/NYNEX* Requirements.

The applicants' purported public interest showing is equally deficient. The table of contents to the application describes the merger's public interest benefits as follows:

- "Numerous Synergies, Efficiencies, and Economies Will be Achieved Through the Merger of WorldCom and MCI." (ii).
- "Local Services Competition Will be Particularly Enhanced from the Merger of WorldCom and MCI." (*Id.*)
- "Substantial Enhancement of International Services Competition Will Likely Result from the Merger of WorldCom and MCI." (*Id.*)

The text accompanying these claims, however, is a vacuum, without facts, data or other information to corroborate WorldCom's bare assertions. Nonetheless, to give the applicants fair credit for their efforts, an abridged rendition of their arguments is as follows:

- "Combined, the two companies will accelerate competition - - especially in local markets - - by creating a company with the capital, marketing abilities, and state-of-the-art network to compete against incumbent carriers." (iv).
- "The combination of advanced fiber-based local city networks, high capacity transoceanic cable, and state-of-the-art global long distance and data networks well position the combined company to become a pre-eminent provider of advanced one-stop-shopping telecommunications services." (2).
- "The contribution of WorldCom's domestic local networks, with an established, facilities-based presence in over 50 U.S. metropolitan areas, will greatly accelerate MCI's local services entry strategy and result in significant

²⁰ WorldCom/MCI app., Vol. I, at 27, 38.

savings, efficiencies, and economies of scale and scope for the combined company." (2-3).

- "Substantial synergies are expected to be realized by combining the long distance and local operations of MCI and WorldCom to achieve better utilization of the combined network and operational savings." (30).
- "The proposed WorldCom-MCI Merger will provide WorldCom with additional facilities and resources to accelerate its expansion into international markets now that international opportunities are increasing and WorldCom is beginning to compete with the large incumbent carriers to capture those opportunities." (36).

Notwithstanding these lofty claims, WorldCom and MCI fail to provide *any* information to document the purported synergies, efficiencies, cost savings and enhanced competitive capabilities.²¹ Not only is there no meat on their bones, but the bones themselves are missing.

II. THE WORLDCOM/MCI MERGER WOULD DIMINISH COMPETITION IN THE DOMESTIC RETAIL AND WHOLESALE LONG DISTANCE MARKETS.

In two conclusory paragraphs, WorldCom and MCI cavalierly dismiss any concerns that the combination of the second largest and fourth largest interexchange carriers ("IXCs") could adversely affect domestic long distance competition.²² They neither acknowledge nor address the fact that long distance pricing already evidences tacit cooperation, the long distance industry already is highly concentrated, and the merger would substantially increase concentration. Rather, the applicants merely

²¹ Even assuming facts could be provided to support the applicants' claims, it is hardly the point that the lesser of two horizontal competitors may be made stronger. The same can be said of virtually every horizontal merger, no matter how anticompetitive it may be.

²² Amendment Exhibit 4 at 39-40.

assert that they hold no bottlenecks, that coordinated action is not likely, and that the interexchange market has “the fewest entry barriers.”²³ In reality, as detailed below, the merger of WorldCom and MCI would substantially diminish competition in the markets for retail long distance service and the supply of transmission capacity to resellers.

A. The Merger Would Exacerbate Coordinated Interaction in the Retail Long Distance Market.

1. WorldCom and MCI Are Two of Only Four Most Significant Participants in the Domestic Retail Long Distance Market.

The Commission has stated that the domestic long distance product market includes “all interstate, domestic, interexchange services.”²⁴ Each point-to-point market constitutes a separate geographic market, but these markets may be grouped where customers face the same competitive conditions.²⁵ WorldCom and MCI have provided no information to determine whether the relevant geographic market for purposes of assessing the competitive effects of the merger should be the national market, or whether their combined strength in particular locations or regions creates a risk of unilateral market power and thus requires a more refined analysis. Nor have they provided information to assess whether their combined strength varies among long

²³ *Id.*

²⁴ *Motion of AT&T To Be Reclassified as a Non-Dominant Carrier*, 11 FCC Rcd 3271, 3286 (1995) (“AT&T Non-Dominance Order”); *Competitive Carrier Fourth Report and Order*, 95 F.C.C. 2d 554, 563 (1983).

²⁵ *Bell Atlantic/NYNEX Order* at ¶ 54.

distance customer groups. Such information must be provided to permit an accurate competitive impact determination.

Today, the domestic long distance market is classified as "highly concentrated" under the Justice Department's Merger Guidelines.²⁶ The market is effectively dominated by four facilities-based, nationwide carriers, which together account for more than 80 percent of total revenues and almost 90 percent of presubscribed lines.²⁷

²⁶ See United States Dept. of Justice - Federal Trade Comm'n, 1992 *Horizontal Merger Guidelines*, 57 Fed. Reg. 41552 (1992) ("1992 Horizontal Merger Guidelines"); 1997 *Revisions to the Horizontal Merger Guidelines Issued by the U.S. Department of Justice and the Federal Trade Commission*, April 8, 1997. The FCC typically uses the Merger Guidelines as a significant component of its public interest analysis. See *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate Interexchange Marketplace*, Second Report and Order in CC Doc. No. 96-149 and Third Report and Order in CC Docket No. 96-61, FCC 97-142 (Apr. 18, 1997); *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, To Reallocate the 29.5-30.0 GHz Frequency Band, To Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking, CC Docket No. 92-297, FCC 97-82 (Mar. 13, 1997); *Pacific Telesis Group*, 12 FCC Rcd 2624 (Jan. 31, 1997); *AT&T Non-Dominance Order, Sprint Corporation*, 11 FCC Rcd 1850 (1996); *Motion of AT&T Corp. To Be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271 (1995); *BAMS-NYNEX Mobile*, 10 FCC Rcd. 13368 (1995); *Market Entry and Regulation of Foreign Affiliated Entities*, IB Docket No. 95-22, Report and Order, 11 FCC Rcd 3873 (1995); *Craig O. McCaw & American Tel. & Tel. Co.*, 9 FCC Rcd 5836 (1994), *recon. denied*, 10 FCC Rcd 11786 (1995), *aff'd sub nom. SBC Communications v. FCC*, 56 F.3d 1484 (D.C. Cir. 1995); *Request of MCI Communications Corp. British Telecommunications PLC*, File No. I-S-P-91-013, 9 FCC Rcd 3960 (1994).

²⁷ The source for the table in the text is the Commission's *Report on Long Distance Market Shares* (October 1997).

Table 1: Interexchange Carrier Market Shares

AT&T	47.9	63.3	69.9
MCI	20.0	14.5	13.7
Sprint	9.7	7.4	5.0
WorldCom	5.5	2.7	Not available
Others	17.0	12.1	11.4 (including WorldCom)
HHI	2823	4279	5099

In these circumstances, AT&T, MCI, Sprint, and WorldCom are clearly the “most significant market participants.”²⁸ The hundreds of other IXCs are predominantly resellers, and the few other facilities-based carriers do not operate nationwide and have little brand recognition or other market presence.

Dividing the retail market into customer segments as identified by the Commission²⁹ reveals even greater cause for concern. Market share data by class of customer are not readily available (and certainly were not provided by the applicants). However, WorldCom and MCI clearly have significantly higher market shares among medium and large businesses than the overall figures contained in the *Report on Long Distance Market Shares*. Indeed, when combined, MCI's and WorldCom's market shares for this customer segment may well exceed that of AT&T and may give the

²⁸ The Commission has defined the “most significant market participants” as “the market participants that have, or are likely to speedily gain, the greatest capabilities and incentives to compete most effectively and soonest in the relevant market.” *Bell Atlantic/NYNEX Order* at ¶ 62.

²⁹ *Bell Atlantic/NYNEX Order* at ¶ 53

merged company market power.³⁰ Once again, the applicants must provide more data for the Commission to make an accurate assessment of the effects of the merger.

Looking to the future, additional competition may come from several entities. None of these, however, is likely to offer the ubiquitous network and advanced features that are necessary to enable them to be a full-fledged competitor to the Big 4 IXC's. Nor is any of these possible entrants likely to be able to offer wholesale services that would meet the needs of GTE and other resellers for a ubiquitous national supplier of basic and advanced capabilities.³¹ For example, if the BOCs begin providing long distance service within the next year, they could bring competitive discipline to portions of the domestic long distance market. Nonetheless, the BOCs will operate primarily as resellers outside of (and possibly within) their regions, and they probably will not be

³⁰ The merger would also adversely affect mass market customers. WorldCom competes in this market segment both directly and, as discussed in section II.B, below, indirectly through a host of name-brand resellers, including GTE. Currently, WorldCom is the lowest cost provider of wholesale capacity and the only provider of advanced services and capabilities for resale. After the merger, MCI/WorldCom undoubtedly would raise wholesale rates and discontinue the provision of advanced services and capabilities to resellers, effectively depriving retail consumers of a low-cost alternative to the remaining Big 3 IXC's.

³¹ See Declaration of Debra R. Covey (Appendix 1 hereto). In fact, contrary to the applicants' claim, there are considerable barriers to entry in the long distance market. While it is easy to enter as a reseller, resale competition alone cannot drive overall price levels down to cost. In addition, as discussed in Section II.B below, the merger will diminish competition in the supply of wholesale capacity to resellers, impeding their ability to offer service at reduced rates. Only facilities-based competition can discipline overall rate levels, and constructing a nationwide network with full interoperability and intelligence is an extremely costly and time-consuming process. Other barriers to entry include Section 271, which restricts the BOCs' provision of interLATA service, and the Commission's Docket 96-149 rules, which do not directly bar entry but prevent incumbent LECs from taking advantage of pro-consumer integration efficiencies.

strong competitors for all customer segments. Although the Big 4 IXC's have national brand recognition and market presence, each BOC is known primarily in its own region and, possibly, in contiguous territories served by neighboring BOCs. The BOCs thus may be hampered in competing to serve customers with nationwide telecommunications needs – the very customer segments where WorldCom and MCI appear to be strongest.³²

Accordingly, for today and the foreseeable future, there are and likely will be only four most significant participants in the domestic long distance market. As discussed below, structural conditions in the market contribute to coordinated pricing, and the three largest companies currently enjoy exceptionally high price-cost margins that are more consistent with tacit collusion than with vigorous competition. By dramatically increasing concentration in the industry and altering the incentives of the only most significant participant that acts as a “maverick” (WorldCom), the merger of MCI and WorldCom would be directly antithetical to the interests of all retail consumers of long distance services.

2. The Merger Would Reinforce Conditions that Promote Cooperative Pricing of Long Distance Services and Would Eliminate the Lone Maverick Supplier.

In the *Bell Atlantic/NYNEX Order*, the Commission cautioned that “[m]arket performance can ... be adversely affected if a merger increases the potential for coordinated interaction by firms remaining in the post-merger market. ... [A]s the

³² As the Commission found in the *Bell Atlantic/NYNEX Order* (at ¶ 73), “Bell Atlantic would have been most likely to target mass market, not large business, customers.”

number of most significant market participants decreases, all other things being equal, the remaining firms are increasingly able to arrive at mutually beneficial market equilibria, to the detriment of consumers."³³ The horizontal combination of MCI and WorldCom in the domestic long distance market raises such concerns to a far greater extent than any merger previously reviewed by the Commission.

The long distance market already is highly concentrated, with a pre-merger HHI of 2823 based on revenues.³⁴ Combining WorldCom's and MCI's revenues would give the merged company a 25.5 percent market share in the overall market, and, almost certainly, a much greater share among medium-sized and large business customers. The overall post-merger HHI would be 3038, an increase of 215. Under the Department of Justice's merger guidelines, such a high initial HHI level combined with an increase of this magnitude would be presumed to create or facilitate the exercise of market power.

a) The Domestic Long Distance Market Already Exhibits Coordinated Pricing.

The long distance market already is beset by cooperative rather than competitive pricing. The Commission acknowledged more than two years ago that AT&T, MCI, and Sprint may have been engaging in tacit price collusion,³⁵ and economic theory confirms

³³ *Bell Atlantic/NYNEX Order* at ¶ 121.

³⁴ *Long Distance Market Shares*, Table 6.

³⁵ *AT&T Non-Dominance Order*, 11 FCC Rcd at 3314-15.

that the long distance market is characterized by conditions supporting coordinated interaction.

For example, Robert Crandall and Leonard Waverman have concluded that “[t]he evidence presented establishes the existence of conditions under which firms, even in the absence of a single firm with ‘market power,’ or overt collusion, and even in the absence of any conscious desire to coordinate prices, may discover that they are able to maintain prices above the competitive level.”³⁶ As Crandall and Waverman explain, supracompetitive prices can be maintained in a market without any single firm having market power as long as each firm believes that a reduction in price will lead to a reduction of its profits. Maintaining this belief requires four conditions, each of which is present in the long distance market: high market concentration due to a limited number of suppliers, prices that are common knowledge, the existence of credible capacity of rivals to meet any price reduction or retaliate with a greater reduction, and similarity of costs across suppliers.³⁷

Empirical analyses confirm that the three largest long distance carriers are not pricing competitively in any market segment. Following a painstaking examination of those carriers’ pricing of MTS, inbound WATS, outbound WATS, and contract services, Professor Paul MacAvoy of Yale University has concluded that “[t]he dynamic behavior of [price-cost] margins in the early 1990s provides evidence that the three major

³⁶ Affidavit of Robert Crandall and Leonard Waverman in Support of Ameritech’s Section 271 Application for Michigan, (filed May 21, 1997), at ¶ 85. Crandall is a Senior Fellow in Economic Studies at the Brookings Institution, and Waverman is a Professor of Economics at the University of Toronto.

³⁷ *Id.* at ¶¶ 10-11, 60-77.